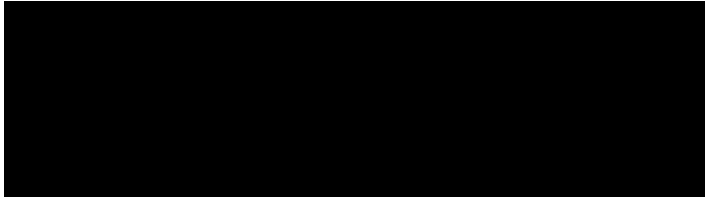




U.S. Citizenship
and Immigration
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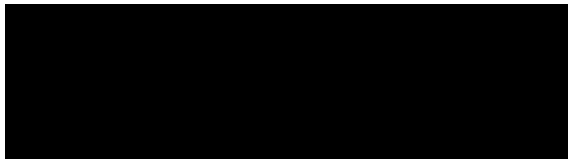


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: 2/10/04

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

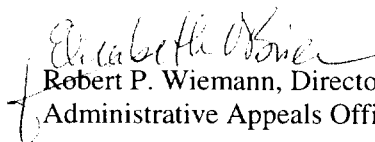
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered salary.

On appeal, the petitioner submits further financial documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The director's sole stated ground for denial is that the petitioner has failed to submit sufficient evidence of its ability to pay the beneficiary's proffered salary of \$18,000 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The priority date, for this type of petition, would be established as of the petition's filing date, in this instance September 9, 2002. The petitioner's initial submission includes a document entitled "2002 Years Offering

Compilation of the Budget.” This document reflects a total of \$58,200 in offerings. Because the petition was filed several months before the end of 2002, the document cannot be a year-end report of offerings *received*. Rather, it appears to be a projection of *anticipated* offerings. This would be consistent with the term “budget,” and with the fact that all of the sums in the document are round multiples of \$200. The document does not establish that the petitioner actually had \$58,000 available at the time of filing. Following a request for additional information, the petitioner has also submitted a “2003 Years Offering Compilation of the Budget” showing \$95,500 in offerings, with all amounts being round multiples of \$500.

The petitioner’s initial and subsequent submissions also include partial copies of bank statements from several different banks. Statements from First Union/Wachovia show the following balances:

April 1, 2002	\$0.00
May 1, 2002	2,050.00
June 1, 2002	2,450.00
June 30, 2002	8,234.00
February 1, 2003	12,322.00
February 28, 2003	14,388.00
March 31, 2003	3,502.50
April 30, 2003	6,748.50
May 28, 2003	5,785.66

A letter from First Union/Wachovia shows that the petitioner opened the above account in November 2001, and therefore the zero balance on April 1, 2002, appears to be due not to the opening of a new account, but to the exhaustion of funds in the already-existing account.

A single statement from Intercontinental Bank shows the following balances:

February 14, 2003	\$11,244.39
March 14, 2003	744.39

A notation in the record indicates that the above account was “transferred to Wachovia,” and therefore the remaining balance of \$744.39 would be part of, rather than in addition to, amounts shown on later Wachovia statements.

Statements from Atlantic States Bank show the following balances:

December 1, 2002	\$605.87
December 31, 2002	1,520.62
January 31, 2003	574.97
February 28, 2003	393.97
March 31, 2003	1,110.97
April 30, 2003	649.97

Leaving aside the fact that bank statements do not provide a complete picture of the petitioner’s finances, the above figures do not facially establish the petitioner’s ability consistently to pay the beneficiary \$18,000 per year. We cannot add up successive monthly bank balances, because the balances do not represent parts of a larger, cumulative total; one month’s balance goes into the next month’s withdrawals. As of April 30, 2003, the petitioner had only \$7,398.97 in the bank, an amount that would be exhausted by less than five months of

salary payments to the beneficiary. The record does not show new income sufficient to replenish that amount, and ensure that the petitioner reliably has sufficient funds on hand to pay the beneficiary's salary.

The director denied the petition, stating that the petitioner has not established its ability to pay the beneficiary's wages. On appeal, the petitioner submits a "Statement of Fund Balance," indicating that, during 2002, the petitioner paid \$96,175 in expenditures out of \$120,838 in contributions, leaving a surplus of \$24,663 as of December 31, 2002. A "Balance Sheet" states that, as of June 30, 2003, the petitioner had \$33,277 in cash (including \$33,264 in contributions), with no current or long-term liabilities to offset its assets. These documents were prepared by accountant James Borduin of Y.S. Accounting & Tax Service, who stated "I have not audited or reviewed the accompanying financial statements"; rather, he had "compiled" the balance sheets, and "[a] compilation is limited to presenting . . . information that is the representation of management." Thus, the balance sheets are not proof of ability to pay, but the petitioner's own claims regarding that ability.

The petitioner submits copies of monthly offering totals:

January 2002	\$8,262
February 2002	7,863
March 2002	11,295
April 2002	7,724
May 2002	9,046
June 2002	6,536
July 2002	10,770
August 2002	9,536
September 2002	9,604
October 2002	10,100
November 2002	8,184
December 2002	2,194
January 2003	4,594
February 2003	8,056
March 2003	4,753
April 2003	7,185
May 2003	2,464
June 2003	10,965

The above amounts show total offerings of \$101,114 for 2002 and \$38,017 for the first half of 2003. These amounts do not agree with the "contributions" totals set forth in the accountants' compilation reports. These discrepancies underscore the need for the petitioner to provide actual *evidence* regarding its finances, rather than mere *claims*, whether those claims take the form of simple assertions or elaborate tables.

The previously submitted bank statements do not show adequate deposits to account for the contributions claimed above. The petitioner does not explain where the rest of the offerings went, if not into the bank accounts documented originally.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The

non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner's submissions prior to the denial did not show sufficient funds to pay the beneficiary's salary. The petitioner's submissions on appeal show larger amounts, but are not consistent with the petitioner's prior claims. The petitioner has not submitted the required types of documentation, nor otherwise provided verifiable documentation that it had, on the filing date, and continues to have, sufficient funds available to pay the beneficiary's salary. The inconsistencies in the petitioner's documentation call into question the credibility of those materials. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.